

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579**

**IN THE MATTER OF THE CLAIM OF**

**AGUSTIN R. RIOS**

**Under the International Claims Settlement  
Act of 1949, as amended**

**Claim No. CU-3331**

**Decision No. CU-5109**

**Counsel for claimant:**

**Curtis, Mallet-Prevost,  
Colt & Mosle  
By Albert J. Parreno, Esq.**

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Appeal and objections from a Proposed Decision entered on July 22, 1970.  
No hearing requested.

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Hearing on the record held on September 1, 1971.

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**FINAL DECISION**

Under date of July 22, 1970, the Commission issued its Proposed Decision certifying losses in favor of claimant in the amount of \$51,953.00 plus interest. Certain portions of the claim were denied for lack of proof. Subsequently, further supporting documentation was filed in support of claimant's objections.

Upon consideration of the new evidence and claimant's objections in light of the entire record, the Commission amends the decision in this matter as follows:

The Commission finds that claimant was the sole beneficial owner of the apartment house and lot at 262-24th street Vedado, Havana, Cuba, and that his son merely held the bare legal title thereto for the benefit of claimant. The Commission further finds that said property was taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law. The Commission finds that claimant's valuation of the property is fair and reasonable.

Therefore, it is concluded that the value of the apartment house and lot on October 14, 1960 was \$95,000.00.

The Commission finds that claimant owned an 80% interest in the land at 4604 Avenue 5A, Miramar, Havana, Cuba, and a 50% interest in the residence built on the land. The Commission further finds that on October 14, 1960, the date of loss, claimant's interests in the land and building had values of \$20,000.00 and \$25,000.00, respectively.

The Commission now finds that claimant's 1/2 interest in the lot at Country Club Park, Marianao, Havana, Cuba had a value of \$21,250.00 on December 6, 1961, the date of loss.

The Commission finds that claimant's 1/2 interest in the beach property at Jibacoa, Jaruco, Cuba, had a value of \$1,500.00 on December 6, 1961, the date of loss.

Claimant's losses are restated as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Apartment house at 262-24 Street, Vedado	October 14, 1960	\$ 95,000.00
Residence and lot at 4604 Avenue 5A, Miramar	October 14, 1960	45,000.00
Furnishings at residence	October 14, 1960	12,450.00
Unimproved lot at Country Club Park, Marianao	December 6, 1961	21,250.00
Beach property at Trinidad	December 6, 1961	375.00
Beach property at Jibacoa	December 6, 1961	<u>1,500.00</u>
	Total	<u>\$175,575.00</u>

Interest is included as follows:

<u>From</u>	<u>On</u>
October 14, 1960	\$ 152,450.00
December 6, 1961	<u>23,125.00</u>
Total	\$ 175,575.00

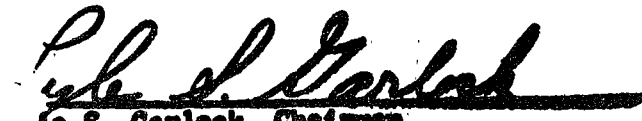
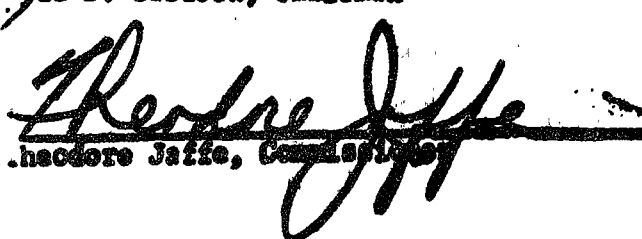
Accordingly, the Certification of Loss in the Proposed Decision is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that AGUSTIN R. RIOS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Seventy-Five Thousand Five Hundred Seventy-Five Dollars (\$175,575.00) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Final  
Decision of the Commission

SFP 1 1971

  
La S. Garlock, Chairman  
  
Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AGUSTIN R. RIOS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3331

Decision No. CU 5109

Counsel for Claimant:

Parreno, Curtis, Mallet-  
Prevost, Colt & Mosle  
By Albert J. Parreno, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by AGUSTIN R. RIOS for \$203,950.00 based upon the asserted ownership and loss of real and personal property, and stock interests in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property, including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Under the Community Property Law of Cuba claimant's spouse, a non United States national at the time of losses pertinent to this claim, had an interest in the property subject of the claim. Claimant and his spouse agree and the record bears out that at the time of their marriage claimant reserved \$50,000 which did not become community property. He further contends he expended \$40,000 on Item 1, below and the remaining \$10,000 was included in the investment of Item 2, below.

Claimant describes his losses, exclusive of his wife's interests, as follows, using the asserted fair market value:

	<u>Amount Claimed</u>
1. Apartment house at 262, 24th Street, Vedado: Claimant asserts he used \$40,000 to purchase this land in 1938 and build an apartment house in 1940 and therefore asserts 100% ownership -	\$95,000.00
2. Residence at 4604 Avenue 5A, Miramar: Claimant asserts his \$10,000 was included in the \$12,670.84 paid for the land in 1951 (his interest thus being 79% thereof); that the house was erected in 1953 for \$37,229.16 to which he added \$1,500 in improvements; and that his total interest is 89 1/2% of an asserted value of \$75,000, or -	47,375.00
3. Furnishings in the residence, 1/2 interest -	12,450.00
4. Unimproved plot, Country Club Park, Marianao, assertedly purchased in 1956 for \$26,256.62 plus expenses of \$1,257.60, having an asserted value of \$42,500 -	21,250.00

	<u>Amount Claimed</u>
5. Beach property, lot 2, block 22, Cojimar Guanabacoa, purchased 1955, asserted payments totaling \$9,723.34, representing 39 of 59 installments, having asserted value of \$20,000 -	\$10,000.00
6. Beach property, lot 7, block 31, also in Cojimar, purchased in 1955, payments totaling \$3,030.17, having an asserted value of \$6,000 -	3,000.00
7. Beach property at Trinidad, parcels 73 and 74, purchased in 1947, for \$473.70 having asserted value of \$750.00 -	375.00
8. Beach property at Varadero, Matanzas, lot 15, block 6, purchased in 1957 for \$7,509.24, having an asserted value of \$10,000 -	5,000.00
9. Beach property at Jibacoa, Jaruco, lot 18, purchased in 1949 for \$2,000, having an asserted value of \$3,000 -	1,500.00
10. Cuban Oils Company - 5 shares purchased in 1938 - par value of \$500.00 -	250.00
11. Cigarros El Credito - 90 shares purchased in 1956 - par value of \$4,500	2,250.00
12. \$2,000 of the capital stock of Cia. Petrolera Trans-Cuba, S.A. purchased at par for 50 cents each in 1957, claimant's basis \$1,000 -	500.00
13. One-third interest in Fabian, Quesada & Cia. Ltda. of Camaguey, engaged in re-capping rubber tires, acquired by claimant's spouse in 1955 for \$10,000 -	<u>5,000.00</u>
	\$203,950.00

Real Property

Claimant has submitted some evidence in support of the 1938 purchase of Item 1, and the later construction thereon; and also as to Item 2, but not in support of his asserted ownership of the other properties claimed. However, at his request, the Commission has sought evidence for claimant. Reports received from abroad reflect that claimant had interests in the following properties:

Item

2. 4604 Avenue 5A - recorded in names of claimant and his spouse.
4. Lot at Country Club Park - recorded in name of claimant's spouse, Emma Cartaya
7. Beach property at Trinidad
9. Beach property at Jibacoa

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who left the country.

On the basis of the record and in the absence of evidence to the contrary, the Commission finds that the improved realty at 4604 Avenue 5A was taken by the Government of Cuba on October 14, pursuant to the Urban Reform Law (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39). The Commission further finds that the furnishings in this residence were also taken on that date.

The Commission also finds that the unimproved properties at Country Club Park (Item 4), Trinidad (Item 7) and Jibacoa, Jaruco (Item 9) were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-December 1966]).

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes claimant's assertions as to value and his descriptions of the properties; values included in reports from abroad; an affidavit of a search by a Cuban lawyer as to Item 2; and affidavits expressing opinions of value of each real property item prepared by a registered real estate broker formerly of Cuba; and by a Cuban lawyer and registered realtor also formerly of Cuba.

On the basis of the entire record the Commission finds that the properties in which claimant's ownership has been established had the following values on the dates of loss:

<u>Item</u>	
2. 4604 Avenue 5A	\$50,000.00
3. Furnishings	24,900.00
4. Lot in Country Club Park	26,256.00
7. Property at Trinidad	750.00
9. Property at Jibacoa	2,000.00

The Commission finds that the record does not establish that claimant had an interest of 89 1/2% in Item 2, and holds that his interest was one-half.

Accordingly, the Commission concludes that claimant suffered a loss in the aggregate amount of \$51,953 within the meaning of Title V of the Act, as the result of the taking of his property by the Government of Cuba.



With respect to Item 1, the apartment house at 262, 24th Street, Vedado, the record shows that the land was purchased by claimant in 1938 and the building erected in 1940 or 1941. However, a report from abroad reflects that this property is now recorded in the name of Pedro Agusti Rios Cartaya, having been acquired by him on June 1, 1959 as a gift in anticipation of inheritance from his father, named in the report as "Antonio Rios Rios". The claimant has stated that his son is now a resident of the United States. The Commission holds that claimant had no interest in this property after June 1, 1959. Accordingly, this item of claim must be and hereby is denied.

With respect to Items 5 and 6, only negative reports were received by the Commission. No evidence at all is of record as to ownership of the property in Item 8. Accordingly, the Commission holds that claimant has failed to establish ownership, and taking of these properties. Thus, the Commission is constrained to deny these items of claim, and they are hereby denied.

Stock Interests

Items 10, 11, 12, and 13.

The Commission has previously established a date of loss, and value in connection with Cia. Petrolera Trans-Cuba, S.A. (See Claim of D. R. Wimberly, Claim No. CU-3417).

However, claimant has submitted no evidence in support of asserted ownership of these four items. The Commission finds that claimant has failed to establish these items of claim. Accordingly, the Commission holds that these items of claim must be and they are hereby denied.

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Claimant states that some of the items claimed before the Commission were claimed as losses under applicable Internal Revenue Service regulations, but that a final report has not been received.

Claimant's losses may be summarized as follows:

<u>Item</u>	<u>Date of Taking</u>	<u>Value of 1/2 Interest</u>
2. Residence at 4604 5th Avenue, Miramar	October 14, 1960	\$25,000.00
3. Furnishings	October 14, 1960	12,450.00
4. Unimproved lot, Country Club Park	December 6, 1961	13,128.00
7. Beach property at Trinidad	December 6, 1961	375.00
9. Beach property at Jibacoa	December 6, 1961	<u>1,000.00</u>
		\$51,953.00

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:


<u>From</u>	<u>On</u>
October 14, 1960	\$37,450.00
December 6, 1961	<u>14,503.00</u>
	\$51,953.00

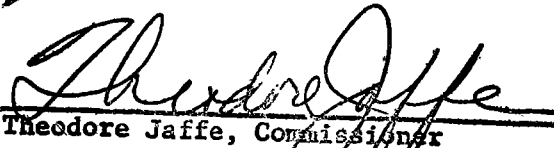
CERTIFICATION OF LOSS

The Commission certifies that AGUSTINE R. RIOS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-one Thousand Nine Hundred Fifty-three Dollars (\$51,953.00 ) with interest at 6% per annum from the aforesaid dates to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**JUL 22 1970**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)